

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12333 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VARAM HASAN MUSABHAI

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 12333 of 2001
MR JAGDISH H MEHTA for Petitioner No. 1
MR PRASHANT MANKAD for Petitioner No. 1-1/3-1/3
Ms.Meeta Panchal, learned AGP for Respondent No. 1-2,5-6
MR AMAR D MITHANI for Respondent No.3 and 4
-

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 20/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. Rule. Ms. Meeta Panchal, learned AGP, waives service of rule on behalf of respondents Nos.1,2,5 and 6. Mr. Mithani, learned advocate, waives service of rule on behalf of respondents Nos.3 and 4. By consent of the counsel appearing in the matter, rule is fixed forthwith.

2. Heard Mr.Mehta for the petitioners and Ms. Meeta Panchal, learned AGP and Mr.Amar Mithani, who appeared for Municipality. Mr.Mehta has taken us through the petition and the documents attached thereto and it is his contention that the respondent - authority had illegally acted with the staff with the help of the police by trying to remove the cabin or the projection by way of Otlā on 13.12.2001 in the evening at 4.30 P.M. and such action of the respondent authority is high handed action and illegal and accordingly petitioners had approached this Court for seeking direction by directing the respondent authority not to demolish the shop of the petitioners. This petition is pending since issuance of notice dated 26.12.2001 and the learned single Judge has issued notice which was made returnable on 21.1.2002 and the relief in terms of prayer clause 12(D) was granted till the returnable date. We have perused the order. Thereafter, the matter was placed before the court from time to time and the interim relief, which was granted earlier, was extended. As the matter was required to be dealt with by the Division Bench and accordingly the petitioners were directed to supply the second set as per order dated 11.3.2002 and accordingly this petition is pending from that date.

3. We fail to understand that why the Registry is not placing the matter before the court when the petitioners had furnished the second set as required as per order passed by the court and the protection which was granted earlier on 26.12.2001 had continued.

4. When the matter was notified before us and during hearing Ms.Panchal, learned AGP has tendered the affidavit of Shri J.V.Bhatt, Mamlatdar, Mangrol, District Junagadh dated 18.2.2002. The said affidavit is also not served on the petitioners immediately, but it was tendered and served to the advocate for the petitioners today in the court during hearing. Mr.Mehta has accordingly objected for taking the said affidavit on record as the petitioners have no opportunity to deal with the contentions raised by Mr.Bhatt in his affidavit

filed on behalf of the Government. The objection raised by Mr.Mehta is well founded and at one point of time we thought it fit that we will not take the said affidavit on record and accordingly we heard Mr. Mehta for the petitioners and it is his contention that the action taken by the respondent authority on 13.12.2001 in the evening was not proper and the action was high handed, in view of the fact that the petitioners are occupying this place since many years, for which he has also annexed certain documents in support of his case. One of the documents is also the document of Registration of the Shop of the petitioners under the Shops and Establishments Act. The petitioners are running S.T.D. P.C.O. booth in the said shop and the petitioners have also obtained licence from the Municipality and the said licence is also produced alongwith the petition. It is the case of the petitioners that the land, on which they are doing business, is belonging to the petitioners and the same is not the land of the Government and it is the case of the petitioners that they have not made any encroachment on the land. During hearing it also transpires and Mr.Mehta has submitted before us that the respondent authority had on 13.12.2001 removed the Osla, which was constructed by the petitioners on the front portion of the Shop, which was constructed to facilitate the customers and this Osla is removed by the respondent authority. The shop in question is still existing as the petitioners are running their business.

5. Ms. Panchal had under instructions from the respondent authority also submitted that it is not correct to say that the respondent authority has removed the shop of the petitioners and it is her case that as per the instructions from the respondent authority that if at all the respondent authority is required to remove the shop of the petitioners, they will follow due process of law and according to her that this fact has been highlighted in the affidavit filed by Shri Bhatt. She has placed reliance upon the averment in the affidavit of Shri Bhatt in paragraph 6. Reading the affidavit of Shri Bhatt, though we have not taken the same on record, it transpires that the respondent authority has in term averred to the effect that there is no reason why the petitioners have any apprehension in the matter of removal of encroachment, demolition of construction etc. since nothing of that sort would be done without due notice followed by compliance of principles of natural justice. This is also the stand of Ms.Panchal today. Mr. Mithani, learned advocate appearing for the Municipality, had also in the same terms stated that if at all any encroachment is found, which is illegal or in

the Government land or in the Panchayat land, due process of law would be followed in compliance of following principles of natural justice.

6. The Otlā in question is already removed according to the petitioners. In view of this and the prayer granted earlier, the shop in question is still existing. In view of the stand taken by the respondent authority, this petition deserves to be disposed off in view of the fact that even for removal of shop of the petitioners, the respondent authority will follow due process of law, meaning thereby that the respondent authority is required to serve notice before asking the petitioners to remove such shop, if it is found unauthorized. Considering this fact, the court is of the view that there is no question of keeping this matter pending. In light of this, Special Civil Application is accordingly disposed off with no order as to costs. Rule is discharged. Interim relief stands vacated.

(D.K.Trivedi,J)

(Sharad D.Dave,J)

arg